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Attorneys for Defendant
TERMINIX INTERNATIONAL, INC.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JEFF EUBANK, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

TERMINIX INTERNATIONAL,
INC., and DOES 1 through 50,
inclusive,

Defendants.

CASE NO. '15CV145 WQHJMA

**DEFENDANT'S NOTICE OF
REMOVAL TO FEDERAL COURT**

**TO THE CLERK OF THE FEDERAL DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA, PLEASE TAKE NOTICE** that
Defendant Terminix International, Inc. ("Terminix Inc.") hereby removes this action
from the Superior Court in the State of California for the County of San Diego to the
United States District Court for the Southern District of California. The removal is
based on 28 U.S.C. sections 1332(d) (the Class Action Fairness Act or "CAFA"),
1441, and 1446.

I. PLEADINGS AND PROCESS

A. On December 18, 2014, Plaintiff Jeff Eubanks ("Plaintiff") filed an
unverified Class Action Complaint alleging a variety of wage and hour violations the
Superior Court of California for the County of San Diego (Case No. 37-2014-

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1.

DEFENDANT'S NOTICE OF REMOVAL TO FEDERAL COURT

1 00042817-CU-OE-CTL) (the "Complaint"). Declaration of Michelle Rapoport in
 2 Support of Notice of Removal ("Rapoport Decl."), ¶ 2, Exh. A.

3 B. The Complaint asserts causes of action for: 1) failure to pay minimum
 4 wages and liquidated damages; 2) failure to pay overtime; 3) failure to provide rest
 5 breaks; 4) failure to provide meal breaks; 5) failure to provide accurate wage
 6 statements; 6) failure to pay all wages due upon termination; 7) violation of Business
 7 and Professions Code section 17200.

8 C. On December 22, 2014, Plaintiff served a copy of the summons and
 9 Complaint on Terminix Inc. Declaration of Teresa Goolsby in Support of Notice of
 10 Removal ("Goolsby Decl."), ¶3.

11 D. On January 22, 2014, Terminix Inc. will file with the Clerk for the
 12 Superior Court of California for the County of San Diego a Notice to State Court of
 13 Removal to Federal Court in this action, together with a copy of Terminix Inc.'s
 14 Notice to Federal Court of Removal. Rapoport Decl., ¶3. The Rapoport Declaration
 15 sets forth all the process, pleadings, and orders filed, to be filed, or served upon
 16 Terminix, Inc. (to Terminix, Inc.'s current knowledge) in this action to the present
 17 date. Rapoport Decl., ¶4.

18 II. STATEMENT OF VENUE

19 Venue is proper in the United States District Court for the Southern District of
 20 California because Plaintiff filed his Complaint in the Superior Court of California for
 21 the County of San Diego. 28 U.S.C. §§ 84(c), 1391, and 1446.

22 III. TIMELINESS OF REMOVAL

23 A. This Notice of Removal is timely. Under 28 U.S.C. section 1446(b)(1),
 24 the "notice of removal of a civil action or proceeding shall be filed within 30 days
 25 after the receipt by the defendant, through service or otherwise, of a copy of the initial
 26 pleading setting forth the claim for relief upon which such action or proceeding is
 27 based."

1 B. Terminix, Inc. filed this removal on January 21, 2015, which is within
 2 thirty days after it was served with the Complaint. This removal is therefore timely
 3 under 28 U.S.C. section 1446(b)(1).

4 IV. JURISDICTION UNDER CAFA

5 A. In relevant part, CAFA grants federal district courts original jurisdiction
 6 over civil class action lawsuits filed under federal or state law where: 1) any member
 7 of the class is a citizen of a state different from any defendant; 2) the proposed class
 8 contains at least 100 members; and 3) the amount in controversy in the aggregate
 9 exceeds the sum or value of \$5,000,000, exclusive of interest and costs. 28 U.S.C. §§
 10 1332(d)(2), (d)(5)(B). This case meets these three requirements.

11 B. Plaintiff is a California Citizen and Terminix, Inc. is a Citizen of 12 Delaware and Tennessee

13 1. Plaintiff is a resident of the City of San Diego, County of San
 14 Diego, California. (Complaint, ¶ 13.) Plaintiff worked in California and used a
 15 California address as his location of residence during his employment. Goolsby Decl.,
 16 ¶4. Plaintiff is therefore a citizen of California. State Farm Mut. Auto. Ins. Co. v.
 17 Dyer, 19 F.3d 514, 520 (10th Cir. 1994) (recognizing that residence is *prima facie*
 18 evidence of domicile for purposes of determining citizenship).

19 2. Terminix, Inc. is a Delaware corporation having its principal place
 20 of business in the State of Tennessee. Terminix, Inc. is a general partner of Terminix
 21 LP, which employed Plaintiff. Goolsby Decl. ¶ 4.

22 3. Diversity of citizenship under CAFA therefore exists because at
 23 least one member of the proposed class is a citizen of a state (California) different
 24 from a defendant (Delaware and Tennessee). 28 U.S.C. § 1332(d)(2)(A).

25 C. The Proposed Class Contains More Than 100 Members.

26 1. Plaintiff brings his Complaint on behalf of himself and “All
 27 individuals who are currently or have been employed in California by defendants as
 28

1 Pest Control Technicians during the class, and whose working conditions are not
2 controlled by a collective bargaining agreement.” Complaint, ¶33.

3 2. Within this four-year limitations period, Terminix, LP employed
4 over 250 individuals as Pest Control Technicians at any given time. Goolsby Decl.,
5 ¶6. This figure exceeds CAFA’s 100-person minimum.

6 **D. The Amount in Controversy Exceeds \$5,000,000.**

7 1. Under CAFA, the burden of establishing removal jurisdiction is on
8 the proponent of federal jurisdiction. Abrego v. Dow Chemical Co., 443 F.3d 676, 685
9 (9th Cir. 2006). Plaintiff’s Complaint is silent as to the total amount of monetary
10 relief claimed. The Supreme Court, in Dart Cherokee Basin Operating Co., LLC v.
11 Owens, No. 13-719 (U.S. Dec. 15, 2014) at Slip Op. 7, recently recognized that “as
12 specified in §1446(a), a defendant’s notice of removal need include only a plausible
13 allegation that the amount in controversy exceeds the jurisdictional threshold.” See
14 Singer v. State Farm Mutual Auto Ins. Co., 116 F.3d 373, 377 (9th Cir. 1997) (“The
15 district court may consider whether it is ‘facially apparent’ from the complaint that the
16 jurisdictional amount is in controversy.”)

17 2. Terminix, Inc. generally and specifically denies Plaintiff’s
18 allegations in the Complaint. In assessing the amount in controversy, however, a court
19 must assume that a jury will return a verdict for the plaintiff on all class claims. See,
20 e.g., Kenneth Rothchild Trust v. Morgan Stanley Dean Witter, 199 F. Supp. 993, 1001
21 (C.D. Cal. 2002).

22 3. Terminix, LP employed over 250 putative class members in
23 California at any given time between December 18, 2010 and December 18, 2014.
24 Goolsby Decl., ¶5. Over 100 of these putative class members were separated from
25 employment in the approximately three-year period since December 18, 2011. Id.
26 Over 250 of these putative class members were employed in the approximately one-
27 year period since December 18, 2013. Id. Plaintiff’s annual compensation for each of
28 the last four years was over \$50,000, and over \$24 per hour. The average hourly rate

1 for putative class members during the class period was at least \$50,000 annually, and
2 at least \$24 per hour. Id.

3 4. The amount in controversy exceeds \$5,000,000, taking into
4 account Plaintiff's claims.

5 5. **First Cause of Action (Failure to Pay Minimum Wages and**
6 **Liquidated Damages):** Plaintiff contends that Terminix, Inc. owes each putative class
7 member liquidated damages under Labor Code section 1194.2. Complaint ¶ 31. A
8 three year statute of limitations applies to Plaintiff's First Cause of Action under
9 Labor Code Section 1194.2(a). The minimum wage in California was \$8.00 per hour
10 from January 1, 2008 until July 1, 2014, when it was raised to \$9.00. See California
11 Minimum Wage Order MW-2014. For the purposes of removal only, and assuming
12 three hours of unpaid wages per workweek, multiplied by the liquidated amount of
13 \$8.00 per hour, multiplied by the at least 250 putative class members since December
14 18, 2011, the amount in controversy for Plaintiff's first cause of action is at least:
15 \$624,000 (\$8.00 an hour x 2 hours a week x 52 weeks in a year x 3 years x 250
16 putative class members).

17 6. **Second Cause of Action (Failure to Pay Overtime):** Plaintiff
18 contends that Terminix, Inc. owes each putative class member overtime wages under
19 Labor Code section 510. Because Plaintiff brings an unfair business practices claim
20 against Terminix, Inc., the three-year statute of limitations for overtime wages
21 violations is presumably extended to four years. See Cortez v. Purolator Air Filtration
22 Products Co., 23 Cal. 4th 163, 179 (2000). For the purposes of removal only, and
23 assuming two hours of unpaid overtime per workweek since December 18, 2010,
24 multiplied by the 1.5 premium rate, multiplied by Plaintiff's approximate hourly wage
25 of at least \$ 24, the total is: \$3,744,000 (\$36 an hour x 2 hours of overtime per week x
26 52 weeks in a year x 4 years x 250 class members).

27 7. **Third and Fourth Causes of Action (Meal and Rest Periods):**
28 Plaintiff contends that Terminix, inc. owes each putative class member meal period

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1 and rest period premiums under Labor Code section 226.7 at the rate of one hour's
 2 wage for each alleged meal period violation and each alleged rest period violation per
 3 employee. Complaint, ¶¶ 52, 57. Because Plaintiff brings an unfair business practices
 4 claim against Terminix, Inc., the three-year statute of limitations for meal and rest
 5 period claims is presumably extended to four years. See Cortez, 23 Cal. 4th at 179.
 6 For the purposes of removal only, and assuming two meal period violations and two
 7 rest break violations per week since December 18, 2010, each multiplied by the \$24
 8 per hour rate, and each multiplied by at least 250 putative class members who worked
 9 at any given time during the class period, the amount in controversy for the meal and
 10 rest period claims is: $\$4,992,000$ (2 meal breaks x 52 weeks per year x 4 years x 250
 11 putative class members x \$24 per violation based on the hourly rate) + (2 rest breaks
 12 per week x 52 weeks per year x 4 years x 250 putative class members x \$24 per
 13 violation based on the hourly rate) = [$\$2,496,000$ for meal periods and $\$2,496,000$ for
 14 rest periods].

15 8. **Fifth Cause of Action (Pay Stub Itemization):** Labor Code
 16 section 226(e) provides for \$50 penalties for pay period violations, not to exceed an
 17 aggregate of \$4,000, and is subject to a one-year statute of limitations. California
 18 Code of Civil Procedure §340(a). For the purposes of removal only, and assuming
 19 twenty-six pay periods in a year, and at least 250 putative class members employed in
 20 the last year, the amount in controversy for the pay stub itemization claim is: $(\$50 \times$
 21 $26 \text{ pay periods} \times 250 \text{ putative class members}) = \$ 325,000$.

22 9. **Sixth Cause of Action (Wait Time Penalties):** Labor Code
 23 section 203 provides potential waiting time penalties for employees whose
 24 employment ended with the three year period preceding the filing of the complaint.
 25 For the purposes of removal only, and assuming an eight hour workday, multiplied by
 26 the approximate average hourly rate of at least \$24, multiplied by eight hours a day,
 27 multiplied by the 30 day statutory maximum, multiplied by at least 100 putative class
 28 members who left employment in the last three years, the amount in controversy for

1 the wait time penalties claim is: 8 hours x \$ 24 rate x 30 days x 100 putative members
2 = \$ 576,000.

3 10. **Aggregate Amount in Controversy:** The aggregate amount of the
4 amounts in controversy for Plaintiff's claims are: \$624,000 + \$3,744,000 +
5 \$4,992,000 + \$325,000 + \$576,000 = \$10,261,000, which exceeds the CAFA
6 \$5,000,000 threshold. This figure does not take into account attorneys' fees, which
7 would only increase the amount in controversy. See also, Galt G/S v. JSS
8 Scandinavia, 142 F.3d 1150, 1155-1156 (9th Cir. 1998) (when determining whether a
9 complaint meets the amount in controversy requirements, attorneys' fees must be
10 taken into account when calculating the total amount in controversy).

11 **V. NOTICE TO PLAINTIFF AND STATE COURT**

12 A. As required by 28 U.S.C. section 1446(b), Terminix, Inc. will provide
13 Plaintiff, through his counsel, with written notice of this removal.

14 B. As required by 28 U.S.C. section 1446(d), Terminix, Inc. will file a copy
15 of this Notice of Removal with the Superior Court of California for the County of Los
16 Angeles.

17
18 DATED: January 21, 2015

LITTLER MENDELSON, P.C.

19
20 s/ MICHELLE RAPOPORT
21 MICHELLE RAPOPORT
22 Attorneys for Defendant
23 TERMINIX INTERNATIONAL, INC.
24 E-mail: mrapoport@littler.com
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PROOF OF SERVICE

COUNTY OF LOS ANGELES)
 STATE OF CALIFORNIA) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 633 West Fifth Street, 63rd Floor, Los Angeles, California 90071.

On January 21, 2015, I served the foregoing document(s) described as **DEFENDANT'S NOTICE OF REMOVAL TO FEDERAL COURT** on the interested parties in this action addressed as follows:

Todd A. Friedman, Esq.
 Adrian R. Bacon, Esq.
 Law Offices of Todd A. Friedman, P.C.
 324 South Beverly Drive, Suite 725
 Beverly Hills, California 90212
 Tel.: (877) 206-4741
 Fax: (866) 633-0228

☒ By placing true copies thereof enclosed in a sealed envelope(s) addressed as stated above.

☒ **BY MAIL (FRCP 5(b)(1)(C)):** I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice such envelope(s) is deposited with the U.S. postal service on the same day this declaration was executed, with postage thereon fully prepaid at 633 West Fifth Street, 63rd Floor, Los Angeles, California, in the ordinary course of business.

☐ **BY OVERNIGHT DELIVERY (FRCP 5(b)(1)(F)):** I am readily familiar with the firm's practice of collection and processing items for delivery with Overnight Delivery. Under that practice such envelope(s) is deposited at a facility regularly maintained by Overnight Delivery or delivered to an authorized courier or driver authorized by Overnight Delivery to receive such envelope(s), on the same day this declaration was executed, with delivery fees fully provided for at 633 West Fifth Street, 63rd Floor, Los Angeles, California, in the ordinary course of business.

1 ☐ **BY PERSONAL SERVICE (FRCP 5(b)(1)(B)(i)):** I caused said
2 documents to be served by having a professional messenger service,
3 _____, personally deliver them to the person(s) at the
address(es) noted above. (A confirmation document of the
professional messenger service will be retained in our office.)

4 ☐ **BY FACSIMILE (FRCP 5(b)(1)(E)):** Pursuant to FRCP 5(b)(1)(E),
5 on _____, at approximately _____ I served the above
6 stated document by facsimile from the facsimile machine of Littler
Mendelson whose phone number is (213) 443-4299 to the addressee(s)
7 at the facsimile numbers as stated above. The facsimile machine used
8 complies with CRC Rule 2.306(h). Pursuant to CRC Rule 2.306(h) the
transmission by facsimile was reported as complete and without error.

9 I declare that I am employed in the office of a member of the Bar of this Court
10 at whose direction the service was made. I declare under penalty of perjury under the
11 laws of the United States of America that the above is true and correct. Executed on
12 **January 21, 2015**, at Los Angeles, California.

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14 
15 JOANNIE HAN-DRESSOR
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